



COUNTYWIDE CRIMINAL JUSTICE COORDINATION COMMITTEE



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February 15, 2011

TO: Mayor Michael D. Antonovich
Supervisor Gloria Molina
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Supervisor Don Knabe

FROM: Public Safety Realignment Team
Countywide Criminal Justice Coordination Committee

SUBJECT: Report on Realignment Proposal's Impact on the Criminal Justice System
(Related to Item S-1 of the February 15, 2011 Board Agenda)

On February 8, 2011, your Board directed CCJCC to convene a Public Safety Realignment Team comprised of executive-level representatives from the Alternate Public Defender's Office, Chief Executive Office, District Attorney's Office, Probation Department, Public Defender's Office, Sheriff's Department, and Superior Court. The team was directed to review the Governor's realignment proposals, identify impacts they present for public safety, and report back to the Board with findings, recommended positions for your consideration, and alternative strategies to explore.

SUMMARY

Realignment – the shifting of certain State functions to local government – presents real and significant issues for the criminal justice system and public safety. The Public Safety Realignment Team has reviewed the Governor's realignment proposals in an attempt to identify operational, fiscal, and public safety impacts they present. It should be emphasized, however, that many questions remain unanswered about how such realignment would be implemented. This lack of information makes it difficult to assess impact with any specificity, as the details of such a realignment can significantly alter our understanding of departmental and public safety impact.

The Governor's proposal realigns, with funding, the following criminal justice responsibilities to local jurisdictions:

1. Adult parole responsibilities, including jurisdiction of parole violators
2. Jurisdiction of lower level offenders currently sentenced to state prison
3. Court security responsibilities
4. Custody and supervision of juvenile offenders currently under the Division of Juvenile Justice jurisdiction
5. Various criminal justice programs, such as juvenile justice grant programs, and Citizens Option for Public Safety (COPS)

The Public Safety Realignment Team offers the following analysis of these elements of the realignment proposal for your Board's consideration. It should be noted that recommendations for mitigating issues presented by a realigned program are not meant to suggest agreement on advocacy for program realignment. Such recommendations reflect an acknowledgment of the State's crisis and are attempts to identify modifications that could alleviate pressures on the criminal justice system if realignment is enacted.

It is critical that as any process for realignment proceeds, Los Angeles County and local jurisdictions have a key role in drafting implementation language to mitigate any negative impact on the County and help prevent unplanned consequences.

RECOMMENDED OVERALL PRINCIPLES

While specific issues are presented by each proposed program realignment, there are several concerns and needs that apply throughout.

1. Maintaining and preserving current funding for existing public safety programs is critical.

Community Corrections Partnership Act funding (SB 678) and local public safety programs currently funded by the vehicle license fee (VLF) are either directly or potentially impacted by the realignment proposal. VLF funding budgeted for juvenile probation, Juvenile Justice Crime Prevention Act programs, Citizens Option for Public Safety (COPS), and vertical prosecution programs amounts to approximately \$106 million in Los Angeles County. Continued funding for these programs is critical.

2. The Public Safety Realignment Team supports the Chief Executive Officer's guiding principles on realignment, including:

- Funding for any realigned program should be permanent (guaranteed beyond the five years proposed in realignment).
- Funding should reflect true costs to implement programs, including increased costs due to growth in caseload, State or Federal mandates, and inflation.

3. Where possible, realigned programs should be implemented on a contract basis.

4. Any realignment enacted should be phased in to allow for necessary planning, start up, and capacity increases given the complex and serious issues concerned.

5. Liability protection for any realigned program should be built in, and liability costs should be shared by the State.

TRANSFER OF ADULT PAROLE AND JURISDICTION OF PAROLE VIOLATORS TO COUNTIES

The administration has proposed that counties assume responsibility for adult parole, including the jurisdiction of parole violators. There are currently 93,971 felons on supervised parole in California, 27,489 in Los Angeles County. There are an additional 4,055 parolees on non-revocable parole in Los Angeles County.

The details of the proposed shift, including any needed statutory changes, have yet to be clearly outlined by the administration. **This shift as currently drafted presents significant issues for Los Angeles County, and the Public Safety Realignment Team recommends continued discussion and review of this element.**

1. Supervision

Community supervision and case management of adults paroled from prison would become county responsibility. Currently, most parolees remain on parole for an average of three years.

The realignment plan proposes that probation assume parole supervision responsibilities. The Probation Department estimates an additional 600 to 700 officers would be needed to mirror parole's current 48 to one supervision caseloads. Numerous operational issues and questions would be presented by the transfer of this high risk population, such as how the state prison system would coordinate parole release, whether deputies should be armed, and how county-to-county movement of parolees would be managed.

To help address these and other issues, the Sheriff's Department is developing an alternative proposal for Board consideration and continued discussion whereby the Sheriff would assume all or partial parole supervision responsibility. The state's realignment proposal would have to be modified to allow for this option.

As your Board considers a position on the realignment of parole supervision, your Board, the Chief Executive Officer, and justice partners should continue discussion on the most appropriate supervision plan.

2. Treatment Services

Provision of all treatment services for parolees, including substance abuse treatment, mental health treatment, and housing placement, would be county responsibility. Currently, parolees can access such services through the Parole Outpatient Center. According to data from the California Department of Corrections and Rehabilitation (CDCR), over 5,500 parolees in Los Angeles County access parole mental health and/or substance abuse services over a three-month period.¹

¹ Information provided to California State Association of Counties by Department of Finance.

If parole is realigned, these individuals would access services through the County. CDCR funding assumptions are that \$2,275 per offender would be allocated to cover the cost of all local treatment services. This amount would likely be insufficient to cover the treatment, housing, educational and vocational needs of this population.

3. Violations process

The parole violation process is one of the bigger issues presented by realignment, yet, there is no information in the administration's proposal regarding the process by which parole violations would be adjudicated. According to CDCR data, over 58,000 parolees statewide were returned to custody without a new term in 2009.²

The parole violations process is complex and includes a number of operational and legal mandates. *Valdivia v Davis* mandates that parole probable cause and revocation hearings occur within 10 and 35 days, respectively. The current parole violation process is handled by parole, the Board of Parole Hearings (BPH) and a panel of defense attorneys contracted with the State. The administration's proposal is silent as to whether the current violations process would remain or if it would become county responsibility.

If realignment shifted this process to the County, significant and unfunded workload increases on the District Attorney, Public Defender, Alternate Public Defender, and Court could occur. This is a critical issue that must be defined with the County's input.

The team recommends that CCJCC convene a legal working group to develop and propose a violation framework to avoid overloading the local court system with parole violators.

4. Jail Resources and Trial Resources

Through realignment, parole violators would remain under local jurisdiction and would not be subject to a return to prison on a violation alone. Parolees would only return to prison if convicted of a new qualifying offense.

The County must examine the need for additional jail bed space and increased pressure on current jail capacity to accommodate parole violators. In addition, because violators would not face a return to prison, the County can foresee an increase in new filings, which would affect the District Attorney's Office, Public Defender's Office, Alternate Public Defender's Office, and Court.

5. Sex Offenders

There are 2,240 parolee sex offenders in Los Angeles County. Parole currently supervises over 9,600 sex offenders covered under Penal Code Section 290

² "California Prisoners and Parolees 2009", California Department of Corrections and Rehabilitation.

statewide.³ Of those, over 6,200 are subject to Jessica's Law. A total of 6,400 sex offenders are being tracked on GPS, and over 1,900 are considered high risk sex offenders. The state spent over \$18 million on GPS tracking of sex offenders in 2010-11.

Supervision of sex offender parolees is highly resource intensive and must meet the statutory requirements of Jessica's Law and Megan's Laws. Funding does not sufficiently address this issue.

6. Liability

The administration's proposal does not include any detail on the transfer of liability associated with this realignment.

Realignment in this area presents huge liability risk. The administration should engage the County on a solution to this issue, including the potential of sharing liability risk through a trust fund or other options that could mitigate the liability exposure of the County.

JURISDICTION TRANSFER OF NON-SERIOUS, NON-VIOLENT, NON-SEX OFFENDERS

The administration's realignment plan proposes that all offenders sentenced on non-serious, non-violent, non-sex offenses be placed under local jurisdiction if they have no such prior conviction. Realignment would occur on a prospective basis, meaning no current state inmates would be transferred to local jurisdiction. The proposal assumes that the average length of stay for such offenders currently sentenced to state prison is 24 months and that counties would supervise them with a combination of custody and community supervision. **As currently designed, this proposal presents significant concerns for Los Angeles County.**

1. Defining Lower Level Offenders

Penal code sections 667.5 and 1192.7 define serious and violent felonies primarily for enhancement purposes. The District Attorney has emphasized that using these sections to establish when state or local jurisdiction applies is misguided. Many offenders who are convicted of offenses which are not included in these penal code sections are indeed serious offenders and face long-term prison sentences.

2. Capacity Concerns

The sheer volume of offenders shifted under this proposal would overload the local jail system. According to data from the District Attorney's Office, 8,600 offenders sentenced to state prison in 2010 from Los Angeles County would have qualified for local jurisdiction under this proposal. Already implementing early release policies due to overcrowding and financial constraints – most offenders in County jail currently serve 20% of their time – the jail system could not accommodate an

³ Sex Offender Information, California Department of Corrections and Rehabilitation website.

additional 8,000 to 9,000 offenders per year. The Sheriff's Department could open at most an additional 4,500 jail beds with proper funding.

3. Funding Considerations

The realignment funding assumes that offenders would receive six months custody (\$25,000) and 18 months of alternative custody and community supervision (\$3,500). It also assumes that $\frac{3}{4}$ of the population will need treatment programs and services (\$2,275).

Funding for incarceration does not account for jail health or mental health care costs. The Sheriff's Department reports that custody costs for an inmate with long-term medical issues can be 10 times as high as other inmates. Furthermore, the Sheriff's Department has determined that many offenders, such as those with federal holds, would be required to stay in custody well beyond six months.

Funding for community supervision and treatment is likely insufficient to meet the risks and needs presented by this population.

Funding to account for increased cost to the District Attorney's Office, Public Defender's Office, Alternate Public Defender's Office, and Court is also absent. A larger number of offenders in the community may lead to an increase in new filings. Furthermore, the violation process for an individual on community supervision is yet to be determined. This potentially presents the same funding issues for the Alternate Public Defender's Office, District Attorney's Office, Public Defender's Office, and Superior Court as discussed with violation proceedings under parole realignment.

The following suggestions have been made by Public Safety Realignment Team members to help mitigate concerns raised by this proposal:

1. **The types of offenders who would be placed under local jurisdiction should be further refined and limited.** The realignment proposal could be modified to further limit the jurisdiction transfer to individuals sentenced to 24 months or less. The District Attorney's Office reports that of the 8,600 offenders sentenced to prison in 2010 who would qualify for local custody under realignment as currently proposed, 6,301 were sentenced to 24 months or less.
2. **Offenders sentenced to prison who have a federal hold placed should remain under state jurisdiction, regardless of charge or length of sentence.**
3. **The Sheriff's Department should have authority and latitude regarding the release of inmates under realignment. This would include utilizing medical compassionate release based on an inmate's health condition and risk to public safety and would require legislative change.**

4. **The Sheriff's Department should be authorized to utilize voluntary and involuntary electronic monitoring more broadly, including for the pretrial population.**
5. **The state should restructure AB 900 to increase County access to jail construction funding.**

Passed in 2007, AB 900 provides for local jail construction funding on a competitive basis. The process of applying for and awarding this funding, however, has been hindered by a number of requirements. The following changes to AB 900 would facilitate counties' access to jail construction funding created by this legislation:

- Redefining size categories in which counties compete for funding or prioritizing funding based on county's inmate population would more fairly rank counties for funding awards.
- Eliminating the reentry facility siting requirement would provide counties more access to funding. Currently only counties that agree to site a reentry facility are eligible for AB 900 construction funding. Most counties are not in a position to meet this guideline.
- Reducing the County's 25% match requirement would also increase access to funds. Most counties are not in a position to satisfy the match requirement.
- Shifting funding from the State Prison construction allocation to local jail construction would assist counties facing increased jail population pressures. The state construction funding in AB 900 is approximately \$5 billion and has not yet been utilized. A portion of this funding should be shifted to cover county jail construction needs.

CLOSURE OF DIVISION OF JUVENILE JUSTICE (DJJ) AND TRANSFER OF JUVENILE OFFENDER JURISDICTION

The realignment proposal would shift jurisdiction for all juvenile offenders from the state to counties on a prospective basis effective July 1, 2011. **This proposal presents numerous concerns for the County.**

Realignment within the juvenile justice system has already begun. Effective August 2007, SB 81 prohibits a County from sending a juvenile to DJJ for non-WIC 707 (b) offenses. Furthermore, per AB 1628, counties have recently become responsible for the parole supervision of all juvenile parolees. Los Angeles County, therefore, already has jurisdiction of all offenders adjudicated through the juvenile court system, with the exception of the most serious and violent offenders that are still in custody.

There are approximately 360 offenders from Los Angeles County currently housed in DJJ facilities. Approximately 90 wards are sentenced to DJJ each year from Los Angeles County

Juvenile Court. An additional 60 to 70 are sentenced to DJJ each year from Los Angeles adult courts.

Current probation facilities are not designed to address the security needs this population presents, and probation does not have the long-term rehabilitative programming in place these youth require. DJJ provides mental health and sex offender treatment programs that are not available at the local level. Furthermore, placing DJJ eligible youth at probation facilities can disrupt rehabilitative efforts currently in place.

In addition, Los Angeles County has no facilities equipped to comply with legal requirements for housing these offenders. Juveniles currently sentenced to DJJ can remain in custody until 25 years of age. Neither the Probation Department nor Sheriff's Department have facilities to house these juveniles, as they are not equipped to meet the sight and sound separation requirements that apply to offenders sentenced under the welfare and institutions code.

COURT SECURITY

The administration's proposal would shift realignment funding directly to the County for the provision of court security services. **Neither the Sheriff nor the Court object to this proposal.**

This realignment would not create any new responsibilities or operational issues. The Sheriff's Department already provides court security services to the Los Angeles Superior Court on a contract basis. The Sheriff's Department and Los Angeles Superior Court's judicial leadership do not object to this proposal.

TRANSFER OF VARIOUS LOCAL SAFETY PROGRAMS

The administration's proposal would realign various public safety programs – including Citizens Options for Public Safety, juvenile probation, Juvenile Justice Crime Prevention Act (JJCPA), and booking fees funding – to local governments. These programs are currently funded by VLF revenue, which will expire June 30, 2011 unless extended. **The Public Safety Realignment Team supports stable and ongoing funding to these critical programs.**

Loss of funding for these programs would jeopardize 12 juvenile camps, result in the elimination of the County's JJCPA programs, and reduce the number of deputy district attorneys assigned to the vertical prosecution of hardcore gang, narcotics, and elder abuse cases by one third. The Realignment Team encourages continued support for legislation that would extend VLF funding should realignment not proceed.

ALTERNATIVES THAT MAY BE EXPLORED

As the state attempts to address its \$25 billion deficit, the Public Safety Realignment Team suggests the following strategies be explored:

1. CDCR should be authorized to utilize alternative custody options for lower-risk offenders under its jurisdiction. House arrest, GPS monitoring, and treatment center placement, for example, could reduce strain on the prison system. Such a solution was explored in 2009 and should be revisited at this time.
2. The State should consider contracting with Los Angeles County for custody (or other) services. The Sheriff's Department now holds contracts with 42 independent cities, community colleges, Metropolitan Transit Authority (MTA), and others for policing services. The department also has contracts with the Federal Government and a contract with the state courts to provide security services. Contract services are an effective way to deliver services in an appropriately funded manner and can promote an orderly realignment of services.

CONCLUSION

The Governor's realignment proposal represents a potential major shift in criminal justice responsibilities. It is difficult to assess potential impact given the lack of implementation details, but the Public Safety Realignment Team has attempted to identify key issues that are presented and that need to be addressed as realignment discussion continues.

As the State addresses its \$25 billion deficit, the potential impact of realignment on the County's criminal justice system cannot be overstated. Continued dialogue with the State is critical on proposed reforms and how best to provide public safety supervision and services.

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